

## § 90.48

(ii) Use of any requirement of or referral to any Federal, State, or local government agency which will have the effect of correcting a violation of the Act or implementing regulations.

(b) Any termination under paragraph (a)(1) shall be limited to the particular recipient and particular program or activity receiving Federal financial assistance or portion thereof found to be in violation of the Act or agency regulations. No termination shall be based in whole or in part on a finding with respect to any program or activity which does not receive Federal financial assistance.

(c) No action under paragraph (a) of this section may be taken until:

(1) The head of the agency involved has advised the recipient of its failure to comply with the Act or the agency's regulations and has determined that voluntary compliance cannot be obtained.

(2) Thirty days have elapsed after the head of the agency involved has sent a written report of the circumstances and grounds of the action to the committees of the Congress having legislative jurisdiction over the program or activity involved. A report shall be filed whenever any action is taken under paragraph (a) of this section.

(d) An agency may defer granting new Federal financial assistance to a recipient when termination proceedings under paragraph (a)(1) of this section are initiated.

(1) New Federal financial assistance includes all assistance administered by or through the agency for which an application or approval, including renewal or continuation of existing activities, or authorization of new activities, is required during the deferral period. New Federal financial assistance does not include assistance approved prior to the beginning of termination proceedings or to increases in funding as a result of changed computation of formula awards.

(2) A deferral may not begin until the recipient has received a notice of opportunity for a hearing under paragraph (a)(1). A deferral may not continue for more than 60 days unless a hearing has begun within that time or the time for beginning the hearing has been extended by mutual consent of

## 45 CFR Subtitle A (10–1–11 Edition)

the recipient and the agency. A deferral may not continue for more than 30 days after the close of the hearing, unless the hearing results in a finding against the recipient.

[44 FR 33776, June 12, 1979, as amended at 70 FR 24322, May 9, 2005]

### § 90.48 Alternate funds disbursal procedure.

When an agency withholds funds from a recipient under its regulations issued under § 90.31, the head of the agency may disburse the withheld funds so directly to any public or non-profit private organization or agency, or State or political subdivision of the State. These alternate recipients must demonstrate the ability to comply with the agency's regulations issued under this Act and to achieve the goals of the Federal statute authorizing the Federal financial assistance.

[44 FR 33776, June 12, 1979, as amended at 70 FR 24322, May 9, 2005]

### § 90.49 Remedial and affirmative action by recipients.

(a) Where a recipient is found to have discriminated on the basis of age, the recipient shall take any remedial action which the agency may require to overcome the effects of the discrimination. If another recipient exercises control over the recipient that has discriminated, both recipients may be required to take remedial action.

(b) Even in the absence of a finding of discrimination, a recipient may take affirmative action to overcome the effects of conditions that resulted in limited participation in the recipient's program or activity on the basis of age.

(c) If a recipient operating a program or activity which serves the elderly or children in addition to persons of other ages, provides special benefits to the elderly or to children the provision of those benefits shall be presumed to be voluntary affirmative action provided that it does not have the effect of excluding otherwise eligible persons from participation in the program or activity.

[44 FR 33776, June 12, 1979, as amended at 70 FR 24322, May 9, 2005]